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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

STEVEN DOULGAS CANNISTRACI,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, et al.,

Defendants and Respondents.

B253495

(Los Angeles County
Super. Ct. No. BC481982)

APPEAL from a judgment of the Superior Court of Los Angeles County, Kevin C. Brazile, Judge. Affirmed.

Steven Douglas Cannistraci, in pro. per., for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Zna Portlock Houston, Senior Assistant City Attorney, and Vivienne A. Swanigan, Deputy City Attorney, for Defendants and Respondents.

Steven Douglas Cannistraci appeals the dismissal of his action after the court sustained the demurrers to his third amended complaint without leave to amend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

According to the allegations of the third amended complaint, Cannistraci was an employee of various departments of the City of Los Angeles between September 1987 and November 2009. Although Cannistraci's third amended complaint is lengthy, its gravamen is that for many years the City of Los Angeles and its Departments of Transportation and Personnel (collectively, "the City") misclassified his position and underpaid him.

Cannistraci filed suit against the City in April 2012 asserting causes of action for a "continual violation" of the California Fair Employment and Housing Act, Government Code section 12900 et seq. (FEHA); employment discrimination based on religion; employment discrimination based on age; hostile work environment harassment; negligence; "unintentional infliction of emotional distress"; loss of consortium; failure to provide reasonable accommodations for his religious duties; and constructive discharge (three counts).

In May 2012, Cannistraci filed a first amended complaint that added a cause of action for defamation to his earlier claims. The City successfully demurred to all causes of action in the first amended complaint. Cannistraci was granted leave to amend the causes of action for a continuous violation of FEHA; religious and age discrimination; hostile work environment harassment; defamation; and failure to provide accommodations.

Cannistraci filed a second amended complaint in October 2012. It appears that he attempted to allege causes of action for employment discrimination based on age and religion, hostile environment harassment, and failure to provide accommodations for the

performance of religious duties.¹ The City again demurred, and the court sustained the demurrers to each cause of action with leave to amend. In its ruling on the demurrers, the court ruled that Cannistraci had not properly alleged the applicability of the continuous violation doctrine with respect to his FEHA discrimination and harassment claims. Concerning Cannistraci's age and religion discrimination claims, the court ruled that Cannistraci had not adequately pleaded a causal link between an adverse employment action and his religion and age or that the conduct of the City materially affected the terms and conditions of his employment. Turning to his harassment claim, the court ruled that Cannistraci had not pleaded facts supporting his allegations that (1) he was harassed based on his religion or age and (2) the harassment was sufficiently severe or pervasive so as to alter the terms and conditions of his employment. Finally, the court ruled that on the failure to accommodate claim, Cannistraci had not pleaded facts showing that the accommodation granted to Cannistraci was inadequate.

Cannistraci filed a third amended complaint in March 2013, alleging causes of action for employment discrimination based on age and religion, hostile work environment harassment, and failure to provide accommodations for the performance of religious duties. The City demurred once more. The court sustained the City's demurrers, ruling that Cannistraci had not pleaded facts sufficient to show a causal link between the adverse employment action and his religion or age; that he had not alleged facts showing harassment on the basis of religion or age or that the harassment was sufficiently severe or pervasive so as to alter the condition of his employment; and that he had not alleged facts showing that the City failed to accommodate his religious practices.

¹ The first page of the file-stamped copy of the second amended complaint lists these four causes of action, but the document consists of 75 pages of factual allegations, a handwritten note to the court, and a prayer for relief. In Cannistraci's opposition to the demurrer to the second amended complaint, he explained that the second amended complaint "was unfortunately incomplete and only included the first seventy-five (75) pages due to the malfunction of Plaintiff's only available printer in the Los Angeles area within the final two hours prior to the required submission time."

The court denied leave to amend and entered judgment in the City's favor. Cannistraci appeals.

DISCUSSION

“On appeal from a judgment of dismissal following the sustaining of a demurrer without leave to amend, the appellant “has the burden to show either [that] the demurrer was sustained erroneously or that to sustain the demurrer without leave to amend constitutes an abuse of discretion.” [Citation.]’ [Citation.]” (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 866 (*Blickman*).) The standard of review “is well settled. The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. [Citations.] The court does not, however, assume the truth of contentions, deductions or conclusions of law. [Citation.] The judgment must be affirmed ‘if any one of the several grounds of demurrer is well taken. [Citations.]’ [Citation.] However, it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment. [Citation.]” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

I. Proceedings Related to the Second Amended Complaint

Cannistraci complains that in its demurrers the City “began attacking CANNISTRACI’s pled facts, [and] proffering alternative revisions of history.” He asserts his belief that there were misleading, inaccurate, or extrinsic factual statements in the City’s demurrers to the second amended complaint and in the trial court’s ruling on those demurrers. Cannistraci further objects to statements made by the City’s counsel at the hearing on the demurrers to the second amended complaint.

The second amended complaint is not before this court. Once an amended complaint is filed, earlier complaints are superseded and cease to have any effect as a

pleading or as a basis for judgment. (*Bassett v. Lakeside Inn, Inc.* (2006) 140 Cal.App.4th 863, 869-870.) Cannistraci, however, claims that he presents examples from the second amended complaint because the court adopted the City's perspective and "relied upon previous Orders Sustaining in Part the demurrers" to the first and second amended complaints in ruling on the demurrers to the third amended complaint. Cannistraci bases this argument on isolated words and phrases in the judgment and in the ruling on the demurrers to the third amended complaint that refer to the fact that previous demurrers had been sustained. Specifically, he contends that the court revealed its reliance on that prior flawed analysis when it used the word "again" in two sentences in the judgment: "The court sustained the demurrers to Plaintiff's employment discrimination claims based on religion and age without leave to amend because Plaintiff again failed to cure the defects of his complaint in that Plaintiff failed to allege sufficient facts showing a causal link between any adverse employment action and his Christian faith and age"; and "The court sustained Defendants' demurrers to Plaintiff's cause of action for harassment, without leave to amend, because Plaintiff again failed to allege facts showing (1) he was harassed because of his religion or age or (2) such harassment, if any, was sufficiently severe or pervasive so as to alter the conditions of his employment."

Cannistraci also claims that four phrases in the court's ruling on the demurrers to the third amended complaint, "As was the issue in the prior two demurrers," "Despite Plaintiff's multiple opportunities to cure," "has again failed to cure the defects," and "Plaintiff again, as stated in the prior three causes of action, has failed," all "h[ear]ken back to previous demurrers, orders, and rulings, which rulings CANNISTRACI has shown to have foundational misunderstandings of his . . . employment relationship." He asserts that these statements show that the trial court, in ruling on the demurrers to the third amended complaint, was relying on the accuracy of the prior rulings in the case and was influenced by the improper material the City presented in its earlier demurrers.

We have reviewed each of the passages to which Cannistraci refers and conclude that these statements do not indicate that the court: was influenced by prior rulings or arguments previously made by the City; failed to perform the review required for ruling on the demurrers to the third amended complaint; or accepted any party's view of the facts of the case. Instead, these statements demonstrate that the pleading deficiencies identified in the third amended complaint had been identified previously but not corrected despite Cannistraci having several opportunities to state his causes of action, a fact relevant to the question of whether leave to amend should be granted. (See *Stevenson v. San Francisco Housing Authority* (1994) 24 Cal.App.4th 269, 284; *Kately v. Wilkinson* (1983) 148 Cal.App.3d 576, 581.) Because Cannistraci has not demonstrated that when the court ruled on the demurrers to the third amended complaint it was relying on the rulings made or arguments presented with respect to the second amended complaint, we disregard the arguments in Cannistraci's brief that concern the briefing, argument, or ruling on the second amended complaint and limit our consideration to arguments addressing the third amended complaint.

II. Allegedly Inaccurate Matter Introduced in Demurrers to Third Amended Complaint

Cannistraci argues that the City presented "significant deceptive statements" in its demurrers to the third amended complaint. He devotes pages of his briefing to his claim that statements in the demurrers were not factually accurate and to setting forth his own allegations of fact to refute statements in the City's demurrers with which he disagrees. Cannistraci ends his argument with a conclusory statement that these extrinsic or inaccurate matters "prejudicially influenced the outcome of this Case preventing any substantial justice" for him, but he does not identify any defects in the ruling on the third amended complaint in this portion of his briefing. Identifying perceived inaccuracies in the moving papers on the demurrers to the third amended complaint does not demonstrate any error in the ruling on those demurrers. He "has presented virtually no analysis in [his] appellate briefs to support [his] challenge. There is no presentation of the elements

of the causes of action, and, correspondingly, no attempt to cite the facts alleged in [his] amended complaint that correspond to such elements. Nor does [h]e cite to case or statutory authority.” (*Colores v. Board of Trustees* (2003) 105 Cal.App.4th 1293, 1301, fn. 2.) Cannistraci’s arguments do not identify any error in the trial court’s ruling.

III. Construction of Third Amended Complaint

Cannistraci claims that in ruling on the demurrers to the third amended complaint, the court disregarded the principle that in ruling on demurrers, the allegations of the complaint are to be liberally construed with a view to substantial justice between the parties. (Code Civ. Proc., § 452.) According to Cannistraci, the court instead took a narrow view of the third amended complaint; misinterpreted its “main thrusts”; took elements of the third amended complaint out of context; and was not “open to correction” on these subjects.

A. Cannistraci’s Discrimination Claims

In ruling that Cannistraci had failed to allege facts showing a causal link between an adverse employment action and his religion or age, the trial court observed, “The alleged misclassification and the failure to re-classify Plaintiff’s position in a timely manner are not alleged to have been based upon religion or age. [The] Third Amended Complaint ¶ 55 contains no facts wherein the decision to incorrectly classify Plaintiff as a SHDEM [Senior Heavy Duty Equipment Mechanic] or failure to re-classify Plaintiff as an Equipment Superintendent were religion or age based.”

Cannistraci claims on appeal that “that was never CANNISTRACI’s claim.” He refers to various passages in the third amended complaint, one of which specifically states, “Plaintiff has never claimed that DEFENDANTS misclassified him because of his faith. Plaintiff has always stated that they misclassified his SHDEM position because of human error.” Instead, Cannistraci claims that there was such a disparity between his classification and his duties that he could only continue to perform under such

circumstances by “the practice and expression of his faith.” While we understand that Cannistraci contends that the burdens of his position could only be endured by the patience, endurance and grace that he draws from his religion, to state a cause of action for religious discrimination a plaintiff must plead facts showing an adverse employment action causally connected to discriminatory animus. “[T]he elements of a claim for employment discrimination in violation of section 12940, subdivision (a), are (1) the employee’s membership in a classification protected by the statute; (2) discriminatory animus on the part of the employer toward members of that classification; (3) an action by the employer adverse to the employee’s interests; (4) a causal link between the discriminatory animus and the adverse action; (5) damage to the employee; and (6) a causal link between the adverse action and the damage.” (*Mamou v. Trendwest Resorts, Inc.* (2008) 165 Cal.App.4th 686, 713.) As Cannistraci did not allege an adverse employment action causally linked to discriminatory animus on the basis of religion, he did not state a cause of action for employment discrimination on the basis of religion.

With respect to the issue of age discrimination, Cannistraci identifies by letter or number 28 separate factual allegations that he asserts form the basis for his age discrimination claim, although many pertain to Cannistraci’s religion; and then he includes another page of factual assertions about his employment with the City. Cannistraci does not, however, present any argument as to how these facts demonstrate that the trial court’s ruling sustaining the demurrers to the age discrimination cause of action was incorrect in any respect. “No reasons being assigned or set forth in the brief why the rulings of the court were not correct, it is not incumbent upon an appellate court to look for reasons.” (*Brown v. Brown* (1930) 104 Cal.App. 480, 489.) Cannistraci has failed to meet his burden to show that the demurrers were sustained erroneously or that sustaining the demurrers without leave to amend was an abuse of discretion. (*Blickman, supra*, 162 Cal.App.4th at p. 866.)

B. Trial Court's Alleged Misinterpretation of the Third Amended Complaint's Failure to Accommodate Cause of Action

Cannistraci argues that the court misinterpreted the request for accommodations that forms the basis for his cause of action for failure to accommodate. This cause of action relates to a letter, attached as an exhibit to the third amended complaint, that Cannistraci sent to the City in October 2009 seeking accommodations to permit him to fulfill his religious duties. In the letter, Cannistraci requested what he termed “the simple request of a loving husband to be able to be with his faithful wife and depend[e]nt mother. This is a consistent and expected practice of normal couples and families, as well as a specific Christian requirement clearly spelled out in Scripture.” Cannistraci presented two options to the City. “The first option,” he wrote, “is to appropriately classify and compensate me for my services in an equitable manner relative to my inter-Departmental co-workers and City workers in other Departments performing at the same level.” “The second option is to allow me the discretion to telecommute for the majority of the time that it takes the City to finalize my reclassification and institute appropriate compensation.” Cannistraci “suggest[ed] and request[ed] the telecommuting option, which can be implemented immediately, while still allowing for the City’s slow processes.” The City agreed to permit Cannistraci to telecommute for two months, with the possibility of extending that period.

The trial court concluded that Cannistraci had failed to plead facts showing a failure to accommodate: “Plaintiff, again, as stated in the prior three causes of action, has failed to allege any facts to show that defendant failed to accommodate plaintiff’s request to spend time with his family in Oregon.” Specifically, the court observed that Cannistraci had asked to be reclassified or to telecommute, and that his request to telecommute was granted.

Cannistraci argues on appeal that the court’s ruling on the demurrers to the third amended complaint “[i]ndicates His Honor’s misunderstanding that [Cannistraci’s] Request was simply to ‘*spend time with his family in Oregon*’”; “[c]laims that [third

amended complaint paragraph] 268 took one of the paragraphs of CANNISTRACI's Request for Accommodation out of context"; and misinterpreted his request for accommodations "to consist of two options, as though each was independent and either one would suffice to fulfill the Request." (Emphasis original.) He claims he was not asking the City for what he terms the "Telecommute Option," but that instead he was offering it to the City. Cannistraci then argues that although he gave the City two options for accommodating him in his letter that the City actually was required to immediately reclassify him and increase his pay (his first option) or else the conflict between his employment requirements and his religious practices would remain.

With these arguments Cannistraci has not identified any error in the court's ruling. While a reasonable accommodation of an employee's religion eliminates the conflict between employment requirements and religious practices (Gov. Code, § 12940, subd. (l)(1); *Ansonia Bd. of Educ. v. Philbrook* (1986) 479 U.S. 60, 70), Cannistraci has not established any conflict between his employment and his religious practice that was not eliminated by the City's permission to telecommute. Cannistraci had requested that the City accommodate his need as a Christian to "be with his faithful wife and depend[e]nt mother"; that is, to spend time with his family in Oregon. Cannistraci pleaded in his third amended complaint that the City permitted him to telecommute for two months, with a possibility that the time could be extended. Cannistraci has not pleaded facts showing that this accommodation was legally insufficient or that a request for reclassification of a position is in any way connected to a religious practice that requires accommodation. "The employer is not obligated to choose the best accommodation or the accommodation the employee seeks." (*Hanson v. Lucky Stores* (1999) 74 Cal.App.4th 215, 228.) Cannistraci has not demonstrated any error here.

C. Reasonable Person Test

Cannistraci argues that the court was required to consider the totality of the circumstances from the perspective of a reasonable person in plaintiff's position in ruling

on the demurrers. He sets forth a number of factual allegations in the third amended complaint and argues that from these allegations, it would have been reasonable for the court to “accept as fact, or to infer from other clearly pled facts that” (1) the other individuals who tried to replace Cannistraci found it difficult or impossible to perform the position as Cannistraci did or to accept the compensation provided; (2) the City had difficulty replacing Cannistraci and concluded that he was the person who could best perform the job; (3) the City knew that his position was extremely misclassified; (4) that the City made its decisions knowing that Cannistraci’s reason for working for the City was that God had called him to do so; (5) that without an accurate classification for the position, it would be difficult to properly pay, recruit, and maintain a suitable work force; and (6) Cannistraci was the only effective support for the achievement of the City’s goals and objectives in Cannistraci’s field.

Cannistraci’s argument is insufficient to establish any error in the trial court’s ruling. “A demurrer tests the sufficiency of the plaintiff’s complaint, i.e., whether it states facts sufficient to constitute a cause of action upon which relief may be based.” (*Young v. Gannon* (2002) 97 Cal.App.4th 209, 220.) Even if we were to accept that the court could have drawn such conclusions from the third amended complaint, Cannistraci has not offered any argument as to how these inferences demonstrate any error by the trial court in ruling on the demurrers. He has not identified the cause of action these inferences relate to, nor has he provided argument as to how these inferences show that he pleaded legally sufficient causes of action or that he could amend his complaint to do so. Cannistraci has failed to meet his burden to show that the demurrers were sustained erroneously or that sustaining the demurrers without leave to amend was an abuse of discretion. (*Blickman, supra*, 162 Cal.App.4th at p. 866.)

D. Reply in Support of Demurrers to the Third Amended Complaint

In a section of his brief entitled, “Unreasonable Person Test,” Cannistraci quotes the text of a footnote in the reply brief in support of the demurrers and complains that it

was hypocritical and unreasonable. Cannistraci's disagreement with a passage in a footnote in the briefing in the trial court is not relevant to the question of whether he has met his burden to show that the court erred when it sustained the demurrers or that it was an abuse of discretion to sustain the demurrers without leave to amend. (*Blickman*, *supra*, 162 Cal.App.4th at p. 866.)

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs, if any, on appeal.

ZELON, J.

We concur:

PERLUSS, P. J.

IWASAKI, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.